

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Wireless Telecommunications Bureau Invites)	WT Docket No. 08-61
Comment on Draft Environmental Notice)	WT Docket No. 03-187
Requirements and Interim Procedures)	
Affecting the Antenna Structure Registration)	
Program)	

To: The Wireless Telecommunications Bureau

**COMMENTS OF
SOUTHERN COMPANY SERVICES, INC**

Southern Company Services, Inc. ("Southern"), on behalf of itself and its operating affiliates, hereby submits its comments in response to the Federal Communications Commission's ("FCC" or "Commission") Public Notice requesting comment on draft rules and interim procedures designed to ensure that the environmental effects of proposed communications towers, including their effects on migratory birds, are fully considered prior to construction.¹

I. INTRODUCTION

Southern is a wholly-owned subsidiary service company of Southern Company, a super-regional energy company in the Southeast United States. Southern Company also owns four electric utility subsidiaries – Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company – which provide retail and wholesale electric service

¹ Wireless Telecommunications Bureau Invites Comment on Draft Environmental Notice Requirements and Interim Procedures Affecting the Antenna Structure Registration Program, Public Notice, WT Docket Nos. 08-61, 03-187, DA 11-558, released March 25, 2011. The Public Notice was published in the Federal Register on April 5, 2011. 76 Fed. Reg. 18679.

throughout a 120,000 square mile service territory in Georgia, most of Alabama, and parts of Florida and Mississippi. Southern is obligated to its employees and to the general public to conduct its operations in a safe manner and to maintain the reliability of its utility services. Members of the Southern Company family use a variety of communications technologies, including FCC licensed radio spectrum, to support the safe and efficient delivery of energy services to their customers. Southern is installing additional wireless facilities for Smart Grid systems in order to improve reliability of electric service. Southern's Smart Grid systems will support high-priority, mission-critical communications essential to utility operations and the safe, reliable, and efficient delivery of electric power to the public. Southern therefore appreciates the opportunity to address the questions raised by the Commission in the Public Notice.

Southern is aware of the challenge to meet the public's ever-growing need for energy and communications services while continuing to minimize the impact on the environment. Southern participates in several environmental stewardship programs and works with volunteer organizations to conserve habitat, protect wildlife, and safeguard natural resources.² The Power of Flight program is a partnership between Southern Company – including its four operating companies – and the National Fish and Wildlife Foundation.³ The partnership funds efforts to conserve birds characteristic of the southern United States through strategic habitat restoration and environmental education. Efforts span Southern Company's primary service area of Georgia, Alabama, northwestern Florida, and southeastern Mississippi. Launched in 2003, the partnership is the largest public agency-private corporation funding effort for bird conservation in the South.

² See <http://www.southerncompany.com/corporateresponsibility/stewardship/wildlife.aspx>.

³ See <http://www.southerncompany.com/corporateresponsibility/docs/poffacts.pdf>.

Southern is extremely cognizant of its duty to work with the appropriate federal agencies to ensure that its operations do not cause adverse effects on the environment. Thus, Southern has established compliance procedures that are consistent with federal and state environmental laws and the FCC's current rules regarding tower construction and notifications. Species occurrence or presence of critical habitat is evaluated and proper consultation is completed prior to initiating activities that occur in the proximity of identified species or their critical habitat. While Southern appreciates that the FCC is responding to a court decision to provide the public with notice of individual tower applications prior to construction, Southern respectfully submits that the FCC's proposed requirements and interim procedures are excessive and are not well-targeted to accomplishing this goal.

II. COMMENTS

The FCC has proposed that for towers that require notice to the Federal Aviation Administration ("FAA") and registration with the FCC, a prospective applicant must first submit certain information about the proposed antenna structure to the FCC, such as ownership information, geographic location, height of the structure, type of structure, and anticipated lighting. As noted by the FCC, most of this information is already provided by applicants in the FCC Form 854 Application for Antenna Structure Registration ("ASR"). Second, a prospective applicant would be required to submit notice of the new antenna structure, or the modification of an existing structure, in a local newspaper or by following the public notification provisions of the relevant local zoning process. Third, the FCC would then post information of the proposed construction on its website. Interested parties would have 30 days after the FCC's website notice to petition the FCC to conduct additional environmental processing of the proposed structure, with an opportunity for the applicant to respond.

A. The FCC's Proposed Notice Requirements Are Unduly Burdensome

The FCC's proposals will significantly delay the pre-construction environmental review process and the timeframes for deployment of new antenna structures, including for structures that are unlikely to have any impact on migratory birds. Because the FCC's proposals will require applicants to provide additional notices for proposed structures that are otherwise categorically excluded from environmental processing, they will create a more complicated administrative process that will dramatically delay tower construction without providing any additional protection to migratory birds. These proposals could require lengthy and burdensome pre-construction review and environmental processing of all towers that require notice to the FAA and registration with the FCC, regardless of location, tower height, tower design and other factors that actually could have an impact on avian mortality rates.

As discussed above, Southern understands that the FCC must balance the need to provide the public with a meaningful opportunity to review the environmental impacts of proposed tower constructions against the need to facilitate the deployment of wireless communications facilities on a reasonable and timely basis. Southern believes certain revisions can be made to the FCC's proposals that will preserve the ability of interested parties who have legitimate concerns to participate in the environmental review process, while streamlining the process to focus on towers that are most likely to raise such concerns.

Instead of requiring applicants to incur unnecessary delays and additional expense in filing a preliminary Form 854 and then providing a local notice through a local newspaper, the FCC can accomplish its goals and comply with the court's decision by providing notice to the public through the FCC's website.

Under the Paperwork Reduction Act, federal agencies are required to certify, and provide a record supporting such certification, that each collection of information "is not unnecessarily

duplicative of information otherwise reasonably accessible to the agency.”⁴ The FAA already makes available to the public information regarding structures that have been submitted for aeronautical study on its website. To the extent that information regarding an applicant’s proposed structure or modification of an existing structure is readily available in the FAA’s database, the FCC is required to collect such information from the FAA instead of imposing an additional burden on licensees. The FCC could provide a link to the FAA’s website so that interested parties who have legitimate concerns regarding the impact of a proposed structure on migratory birds could review the information and file a petition with the FCC for further environmental processing.

The FCC itself already collects information that would be relevant to assessing the impact of a proposed tower on migratory birds in the Form 854. Upon filing of the Form 854 by an applicant, the FCC could provide notice of the filing on its website or through a weekly public notice of ASR applications that have been accepted for filing (similar to what the FCC currently does for ASRs for broadcast towers).⁵ If the time for public comment expires without the filing of any petitions, the FCC could issue a subsequent public notice confirming that an ASR has been issued for the structure in question.

In the appeal giving rise to this proceeding, the U.S. Court of Appeals for the District of Columbia Circuit explained that the problem with the FCC’s current process is that interested parties who wish to file a petition regarding a proposed tower construction only receive notice after the FCC has approved an ASR application.⁶ The court noted that “[i]t was suggested during oral argument that a simple solution would be for the Commission to update its website

⁴ 49 U.S.C. § 3506(c)(3)(C).

⁵ See e.g., Antenna Structure Registration Service Information, Public Notice, Report No. CWS-11-53 (rel. April 27, 2011).

⁶ *American Bird Conservancy, Inc. v. FCC*, 516 F.3d 1027, 1035 (D.C. Cir. 2008).

when it receives individual tower applications; Petitioners stated that such a step would address their NEPA notice claim.”⁷ Southern recommends that the FCC follow the guidance provided by the court and implement a simple solution the environmental groups themselves confirmed was acceptable and would satisfy the FCC’s legal obligations. There is no need to require applicants to file a separate, preliminary Form 854 or a separate, local notice. By providing a public notice through its website prior to approving an ASR application, the FCC can fulfill its obligation and provide interested parties with a reasonable opportunity to raise legitimate concerns without causing applicants to incur significant costs and delays and without imposing additional paperwork burdens on applicants.

B. The FCC Should Exempt Towers Less Than 350 Feet in Height From Any Notice Requirements That Are Adopted

On May 4, 2010, the Infrastructure Coalition (consisting of CTIA, the National Association of Broadcasters, PCIA, and the National Association of Tower Erectors) and the Conservation Groups (consisting of the American Bird Conservancy, Inc., Defenders of Wildlife, and the National Audubon Society) filed a Memorandum of Understanding (“MOU”) with proposed interim standards for processing ASRs pending completion of a rulemaking by the FCC.⁸ The parties proposed that ASRs be divided into three categories for purposes of processing: (1) new towers taller than 450 feet in height; (2) new towers between 351 and 450 feet in height; and (3) new towers no greater than 350 feet in height, replacement towers, and “minor” ASRs (*e.g.*, changes in ownership, dismantlement of towers, and other minor changes to existing towers). The MOU proposed that towers in the first category would automatically require an Environmental Assessment (“EA”) and that towers in the second category would

⁷ *Id.* at 1035.

⁸ Written Ex Parte of Infrastructure Coalition and Conservation Groups, WT Docket Nos. 08-61, 03-187 (filed May 4, 2010).

require public notice before determining if an EA would be required. However, the parties did not agree on whether notice should be required for towers that are 350 feet in height or less.

The FCC's proposed interim rules exempt minor ASRs and most replacement towers from the notice requirements. However, the FCC's proposed interim rules would still require public notice of towers that are 350 feet in height or less. Southern fully supports the recommendation of the Infrastructure Coalition that towers that are 350 feet in height or less need not – and should not – be subject to additional public notice requirements. Southern urges the FCC to revise its proposed interim rules to exempt such structures from any notice requirements that are adopted in this proceeding.

On April 1, 2011, the FCC held a workshop on developing a Programmatic Environmental Assessment (“PEA”) to assess the environmental effects of the FCC's ASR program.⁹ As part of the PEA process, the FCC is examining how certain variables of tower construction, such as location, structure height, support structures or guy wires, and lighting can affect migratory birds. At this workshop, the FCC noted that, all other things being equal, taller towers, towers with guy wires, or towers with steady-burning lights are more likely to result in higher bird mortality.¹⁰ Although registration is generally not required for towers under 200 feet in height, registration is required for structures located on the grounds of an airport and towers between 20-200 feet in height that exceed an imaginary 100:1 slope around an airport runway.¹¹

⁹ Federal Communications Commission Announces Public Workshop for the Programmatic Environmental Assessment of its Antenna Structure Registration Program, Public Notice, DA 11-300 (rel. Feb. 16, 2011).

¹⁰ FCC Antenna Structure Registration Program PEA Workshop (available at http://wireless.fcc.gov/amateur/PEA_1April_Workshop_presentation.pdf) (corrected slides 7-8 available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021237096>).

¹¹ 47 C.F.R. § 17.7

The FCC explained that, according to its ASR database, the relative mix of tower heights based on data for the period of 2006-2011 is as follows: (1) 45.8% of towers are 0-200 feet in height; (2) 7.3% of towers are 201-250 feet in height; (3) 19.6% of towers are 251-300 feet in height; and (4) 17.8% of towers are 301-350 feet in height.¹² As estimated by the FCC, the number of towers registered with the FCC each year that are less than 350 feet in height appears to be approximately 4,000 towers for 2006; slightly over 3,000 towers for 2007-2009; and approximately 2,500 towers for 2010.¹³ The FCC also indicated that various studies, both peer-reviewed and non-peer reviewed, of tower heights and mean annual bird mortality found that bird deaths are less likely to occur for towers that are less than 350 feet in height.¹⁴

Thus, the FCC's proposals would require applicants to submit thousands of additional filings and extend the lead time for thousands of tower projects that are unlikely to have an impact on migratory birds because towers at those heights are unlikely to have a significant impact on migratory birds. Applicants will incur significant costs in terms of financial resources and man hours to comply with the FCC's proposed notice requirements. The FCC should adopt the recommendation of the Infrastructure Coalition to exempt towers that are 350 feet in height or less from the notice requirements. Alternatively, and at a minimum, the FCC could exempt towers that are less than 200 feet in height from the notice requirements, but still require notice for towers between 200 and 350 feet in height. As noted above, towers that are less than 200 feet in height generally do not require notice to the FAA or registration with the FCC, unless they are located near an airport or within the imaginary slope of an airport runway. The only reason that a towers less than 200 feet in height would need to be registered with the FCC is because it is

¹² FCC Antenna Structure Registration Program PEA Workshop (corrected slide 8).

¹³ FCC Antenna Structure Registration Program PEA Workshop (corrected slide 7).

¹⁴ FCC Antenna Structure Registration Program PEA Workshop (slides 12-13).

located near an airport or close to an airport runway. Thus, it is extremely unlikely that such a tower would be located in an environmentally sensitive area where it would have any impact on migratory bird deaths. Exempting such towers from the proposed interim notice requirements would streamline the process and allow members of the public to focus on towers that are more likely to affect migratory birds.

C. Existing Structures Should Be Grandfathered From the Proposed Notice Requirements

The FCC proposes that any ASR applications that are pending on the effective date of the new rules would be exempt from the notice requirements, unless an ASR application is amended because of certain changes in structure height, location, or lighting. Any amendments to an ASR for an existing structure that are submitted after the effective date of new rules would be subject to the notice requirements. Southern agrees with the FCC that the new rules, if adopted, should only apply on a prospective basis to ASR applications that are submitted after the effective date of the new rules. Southern also recommends that the FCC clarify proposed rule 17.4(c)(6) to make clear that amendments to ASR applications that do not involve a substantial increase in height do not require additional notice or start a new time period for filing requests for environmental review. The FCC's proposed rule indicates that amendments to reduce the height of a proposed structure would be exempt, but it is silent on whether any increase in height requires additional notice. Proposed rule 17.4(c)(1)(B) provides that an ASR application that proposes an increase in height for an existing structure that does not constitute a substantial increase in height is exempt from the notice requirements. Thus, the FCC should revise proposed rule 17.4(c)(6) to be consistent such that if an applicant submits an ASR application for a new structure, the applicant does not have to restart the clock if it amends a pending ASR to report a minor increase in height.

III. CONCLUSION

Southern supports the Commission's efforts to comply with the court's decision requiring greater public notice of individual tower applications before they are granted by the FCC. However, the FCC's overly broad and complicated proposal for requiring notice would not provide a targeted or effective solution. The FCC should provide public notice through its website instead of requiring applicants to submit a preliminary Form 854 or provide a local notice through a newspaper or through the local zoning process. The FCC should also exempt structures that are 350 feet or less in height from the notice requirements and clarify that existing structures are grandfathered.

Respectfully submitted,

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